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UNCLAS SECTION 01 OF 02 SANTO DOMINGO 006413

SIPDIS

STATE FOR EB - WILSON
WHITE HOUSE PASS USTR FOR MALITO, PECK, SOUDER, VARGO

E.O. 12958: N/A

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SUBJECT: DOMINICAN REPUBLIC FAILS TO PRODUCE REPORT ON
BROADCAST PIRACY

1. The Dominican Republic missed an October 5 deadline established in a side letter to CAFTA obligating the government to report on actions it is taking to stop television broadcast piracy. When the National Organization for Copyright Protection (ONDA) provided a preliminary copy of the late report to the Embassy in November, it failed to address the broadcast issue in any detail.

2. Background: Dominican trade negotiations with the United States on CAFTA included a side letter on IPR enforcement that focused specifically on television broadcast piracy. The side letter contains a requirement that the Dominican Republic "take all necessary steps to halt television broadcasting piracy by licensed broadcasting stations and to provide a deterrent to future infringements." The Dominicans promised to provide the United States with a written report describing progress in stopping television broadcasting piracy, including criminal, administrative and civil investigations and actions. The deadline for the first report was October 5, sixty days after CAFTA was signed. Despite the side letter commitments, we see no indications that the Dominicans are taking new actions to reduce television broadcast piracy.

3. Embassy contacted various Dominican Government agencies prior to the October 5 reporting deadline to determine whether the government would meet its obligation. EcoPol Counselor and Economic Officer met with the Assistant Attorney General responsible for IPR issues Pedro Fliz Montes de Oca, Undersecretary for Industry and Commerce Marcello Puello, Ministry of Foreign Affairs Undersecretary for Economic Affairs Juan Giuliani Cury, and the new Director of the National Organization for Copyright Protection (ONDA) Marino Feliz Tererro. At the beginning of October, Feliz told Econ Officer that ONDA accepted responsibility for preparing the report but expected not to meet the October 5 deadline. ONDA gave the Embassy an advance copy of the preliminary report on November 5, which touches only peripherally on broadcast issues and instead describes ONDA's organizational structure and documents raids and confiscations of pirated music compact discs and cassette tapes. As of November 5, Feliz had not met with any television broadcasting stations to address broadcast piracy.

4. On November 23, EcoPol Counselor and Economic Officer discussed illegal television transmissions with Jose Rafael Vargas, president of INDOTEL, the Dominican Institute of Telecommunications, and met later with his deputy, Jose Rizek. Vargas expressed concern over the continuing problem of television broadcast piracy but confirmed that ONDA is the agency with the authority and the responsibility to go after illegal broadcasters.

5. Broadcast piracy is nothing new in the Dominican Republic but the tough new Dominican copyright legislation, Law 65-00, introduced in 2000, was designed to help stop the problem. Legal actions taken against violators under the new law have been disappointing. There are two cases that were brought before the Dominican courts in 2002 involving television channels accused of making illegal broadcasts: Telemicro and Canal del Sol. The stations continue to broadcast. In November of this year, Telemicro (channel 5) aired on late night television Lord of the Rings: The Return of the King. To our knowledge, this latest Lord of the Rings movie has not yet been released in the United States on cable television (HBO has first release rights) and Telemicro's broadcast is illegal.

6. The public here sees powerful local television stations as untouchable by the authorities, an assumption borne out by the fact that illegal broadcasts continue to be a problem. A local attorney and businessmen told Economic Officer of several second-hand accounts of threats and other rough treatment of government officials and private individuals working to stop illegal broadcasts. Telemicro, a Dominican station previously owned (and possibly still controlled) by Hatuey de Camps, former head of the Partido Revolucionario Dominicano (PRD), has reportedly used its political influence and threats to keep illegal programming on the air. Local press reported that the station was a major supporter of President Fernandez in the last campaign, providing free

airtime for campaign advertising (a credible allegation, since renegade Hatuey de Camps openly supported Leonel Fernandez against PRD candidate Hipolito Mejia).

17. In addition to Telemicro and Canal del Sol, numerous smaller, less well-known stations probably are in violation of copyright laws. VIRUS, a new station carried by the second largest cable television provider in Santo Domingo, Aster Cable, shows many recent, poorly-dubbed Hollywood releases. The newness of the films, making them high cost, does not coincide with the fact that the station almost exclusively plays local, low-revenue advertising. Economic Officer asked ONDA to determine whether the station is illegally broadcasting movies.

18. Unless otherwise instructed, Embassy will prepare a diplomatic note referring to the August 5 agreement by exchange of notes for the Dominican authorities to provide the enforcement reports, noting the delay, and requesting prompt submission.

19. Comment: Even where resources are readily available that would help determine whether stations are making illegal broadcasts, neither ONDA nor other interested government agencies are using them. At least two services in Santo Domingo make complete, round the clock recordings of all broadcasts made by local stations. While the legal status of these services is unclear, the listings of broadcasts are for sale and would offer agencies such as ONDA ready information to help determine if a station is breaking the law. More than identification of violators is necessary. The best way to present a winnable case against an offending station is to have the backing of a private plaintiff/attorney to see the case through the courts to completion. Without an aggressive plaintiff with a vested interest (apart from the government agencies involved) we do not expect that cases against offenders will be brought to trial or pursued with the vigor necessary to win them.

HERTELL